IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 10TH AUGUST 2006 / 19TH SRAVANA 1928

TRC.No. 521 of 2001

TA.54/1994 of S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER/APPELLANT/ASSESSEE:

M/S. S.T.P. LTD. (SHALIMAR TAR PRODUCTS), COCHIN, REPRESENTED BY ITS BRANCH ACCOUNT EXECUTIVE RAMJEE R.

BY ADV. SRI.PREMJIT NAGENDRAN

RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA.

BY SPL.GOVT.PLEADER (SHRI V.V. ASOKAN)

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 10/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

T.R.C. NO.521 OF 2001

Dated this the 10th day of August, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

The question raised is whether road marking and water proofing of buildings constitute civil construction work entitling the petitioner for payment of sales tax at compounded rate of two per cent under Section 7(7) of the KGST Act. Petitioner has produced a copy of the tribunal's order for the subsequent year, namely 1993 - 94, wherein the tribunal has allowed the claim. Counsel for petitioner submits that the Department has not filed any revision against tribunal's order. According to him, eight other assessments are completed accepting tribunal's order and Department has not challenged the same. The question whether both these items of work constitute road construction work or building construction work, will depend on whether the marking on the road and water proofing of building are done as part of construction work. If the work is done after completion of the

project, then of course, it is an independent work and cannot be assessed as part of construction. However, since there is any general acceptability by the Department for treating the work in the hands of the petitioner as civil construction work, and it is followed in eight other assessments of the very same petitioner and in view of the submission of the petitioner that the main road construction contractor gave a sub-contract to the petitioner and the payment is also received, we allow the TRC modifying the order of the tribunal by reducing the rate of tax to two per cent on road marking work and water proofing work during the year 1991 - 92.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

kbk.

C.N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

T.R.C. NO.521 OF 2001

JUDGMENT

10th August, 2006.